IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.289 OF 2004

Mr. Ashok Savalkar,
residing at B-201,
Redwoods, Vasant Gardens,
Mulund (West),
Mumbai - 400 080. ...Appellant.

v/s

1. Smt. Aruna Ramkrishna Bhatkar,
adult, residing at 199/5240,
Kannamwar Nagar, Vikhlorli (East),
Mumbai - 400 079.

2. The State of Maharashtra
Mumbai. ...Respondents.

Mr. Vikrant C. Deshpande, advoate for the appellant.

Mr. A.M. Shringarpure, APP for the State.

CORAM: V.M.KANADE,J.

DATE: 15th October, 2004.

ORAL JUDGMENT:

1. Appellant is challenging the judgment and order passed by the Special Judge in MPID Special Case No.1 of 2002. By the said judgment and order dated 8/3/2002, the Special Judge directed the appellant to deposit an amount of Rs 3,70,000/- with the Investigating Officer.

FACTS:

2. Brief facts are that the respondent No.1 is the accused in a case which is registered against him before the MPID Court. The accused was carrying on the business of money lending, without any license. The accused also used to collect huge deposits from middle class sections of the Society by giving false assurances to them that they would get huge return on the amounts which were invested by them. Appellant himself was the victim of of the said conspiracy and between July 1993 and December, 1993, appellant invested an amount of Rs 3,70,000/- with the accused No.1. Initially, the accused made payment towards interest in cash to the appellant. However, thereafter, the accused neither paid the interest nor the principal amount. A complaint was lodged by the appellant with the CID, General Branch, Mumbai on 29/6/1994 and the FIR was registered against Mahila Gruh Udyog i.e. an Association formed by the accused. Thereafter, the accused and her husband were arrested under CR No.39 of 1994 and they were charged under sections 420, 406, 120(b) read with section 34 of the Indian Penal Code. Application was made by the appellant for return of property. The Metropolitan Magistrate allowed the said application and directed

that the said amount be returned to the appellant. However, against the said Judgment and Order a revision was preferred in the Court of Sessions by the accused. The Sessions Court dismissed the revision application filed by the accused by order dated 28/7/1995 and, thereafter, on 4/8/1995 the amount of Rs 3,70,000/- was returned to the appellant.

3. In the year 1999, MPID Act came into force and the case was registered against the accused under the MPID Act and was tried by the Special Judge in the Sessions Court. The Special Court passed the impugned order directing the appellant to deposit an amount of Rs 3,70,000/- which was paid to him pursuant to the order passed by the Metropolitan Magistrate on 9/2/1995. By the impugned order the Special Judge directed that the appellant should deposit the said amount with the Investigating Officer of the MPID Court.

ARGUMENTS:

4. The learned Counsel appearing on behalf of the appellant submitted that the said impugned order was passed without hearing the appellant. He submitted that the order passed by the Metropolitan Magistrate had been confirmed by the Revisional Court in 1995 and

the amount was returned to the appellant in 1995 itself and, therefore, MPID Court which came into existence in 1999 had no authority in law to direct the appellant who was himself the victim of the fraud committed by the accused to deposit the money in the MPID Court. He submitted that neither section 7 nor section 8 envisage that the property of the victim could be attached by the Special Court.

5. The learned APP appearing on behalf of the State, however, opposed the said submission made by the learned Counsel appearing on behalf of the appellant. He submitted that the property was returned to the appellant on his executing the bond. He submitted that after the MPID Act had come into force, the provisions of the MPID Act had an overriding effect over the other Acts. He submitted that, therefore, MPID Court had an authority and jurisdiction to direct the appellant to return the property which was given to him on his executing a bond.

FINDINGS:

6. It is no doubt true that after MPID Act has come into force, in view of section 14 of the said Act, the provisions of the Act have an overriding effect over

the other laws which are in force. The question which is required to be considered by this Court is : whether the MPID Court has power to order attachment of the property of the persons who were defrauded by the accused? Sections 7 and 8 of the MPID Act lay down powers of the MPID Court in respect of the attachment of the property. Further, under section 4 of the said Act, Government is empowered to attach the money or the property acquired by the defaulting Financial Establishment either in its own name or in the name of any other person from the deposits made by the investors. The Government is further authorized to attach the property of the promoter, director, partner or manager or member of the said Financial Establishment. The Special Court has power t make such attachment absolute under section 7 of the said Act. Further, under section 8 of the said Act, the Special Court also has power to attach the property which is transferred by the said Financial Establishment.

7. In the present case, Special Court had directed the attachment of the property from the appellant who is neither a promoter, director, partner or manager or member of the Financial Establishment. The property in his possession has not been transferred by such

Financial Establishment malafide. In my view, therefore, the Special Judge had no authority to direct the attachment of the property of the appellant as he does not fall in any of the categories mentioned in sections 7 and 8 of the Act.

8. Appellant himself had filed a complaint in the Metropolitan Magistrate's Court who had directed that the amount of Rs 3,70,000/- be returned to him. This order was confirmed by the Sessions Court in revision and, thereafter, the property was returned. The Special Judge, therefore, in my view, ought not to have directed the appellant to return the said amount which was paid to him particularly when the case before the MPID Court had not been finally decided.

Accordingly, the following order is passed:-

O R D E R

. The impugned order dated 8/3/2002 passed by the MPID Court in Special Case No.1 of 2002 is quashed and set aside. The Special Court is directed to return the money which was recovered from the appellant. Amount to be returned on the appellant executing the bond before the Trial Court.

. Appeal is allowed in the above terms.

. Certified Copy expedited.

. Parties to act on authenticated copy.

V.M. KANADE, J.